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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

MINGBO CAI, Individually and On Behalf of
All Others Similarly Situated,

Plaintiff,

vs.

SWITCH, INC., *et al.*,

Defendants.

Case No. 2:18-cv-01471-JCM-VCF

CLASS ACTION

JOINT RULE 26(f) REPORT

**SPECIAL SCHEDULING REVIEW
REQUESTED**

Pursuant to Federal Rule of Civil Procedure Rule 26(f) and Local Civil Rule 26-1, counsel for Lead Plaintiff Oscar Farach (“Plaintiff”) and counsel for Defendants Switch, Inc. (“Switch”), Rob Roy, Gabe Nacht, Zareh Sarrafian, Donald Snyder, Tom Thomas, and Bryan Wolf, (collectively, the “Switch Defendants”), and Defendants Goldman Sachs & Co. LLC, J.P. Morgan Securities LLC, BMO Capital Markets Corp., Wells Fargo Securities, LLC, Citigroup Global Markets, Inc., Credit Suisse Securities, Jefferies LLC, BTIG, LLC, Raymond James & Associates, Inc., Stifel, Nicolas & Company, Inc., and William Blair & Company, LLC (collectively, the “Underwriter Defendants”) held a telephonic conference on September 4, 2019, regarding the matters identified herein, and respectfully submit this joint report and discovery plan. Because the parties do not anticipate completion of discovery within 180 days of the date upon which the Answers to the Amended Class Action Complaint were filed, the parties seek “special scheduling review” pursuant to L.R. 26-1(d). *See also* Fed. R. Civ. P. 26(f)(3)(E) (requiring identification of “what changes should be made in the limitations on discovery imposed under these rules or by local rule, and what other limitations should be imposed”). The parties submit that a discovery period of more than 180 days is necessary due to the large number of parties, complexity of issues, expected class certification motion practice, and length of the relevant time period at issue. As set forth below, the parties propose that they complete fact discovery by September 11, 2020, which is 380 days from the date the Defendants filed their answers.

I. PROPOSED SCHEDULE

The following chart reflects the parties’ proposed schedule.

Action	Date
Defendants’ Answer	August 28, 2019
Exchange of Initial Disclosures	September 18, 2019
Motion for Class Certification	February 14, 2020
Substantial Completion of Document Production	March 31, 2020
Opposition to Motion for Class Certification	April 13, 2020
Reply in Support of Motion for Class Certification	May 27, 2020

Action	Date
Deadline to Amend Pleadings, or Join Parties	June 12, 2020
Deadline for Service of Written Discovery	July 15, 2020
Deadline for Discovery Motions	September 4, 2020
Fact Discovery Cutoff	September 11, 2020
Expert Disclosures	October 12, 2020
Interim Status Report (LR 26-3)	October 12, 2020
Rebuttal Expert Disclosures	November 23, 2020
Expert Discovery Cutoff	December 31, 2020
Dispositive Motion(s) Deadline	January 29, 2021
Opposition(s) to Dispositive Motion(s)	March 10, 2021
Reply in Support of Dispositive Motion(s)	April 29, 2021
Pretrial Order	30 Days After Dispositive Motions Deadline or Resolution of Dispositive Motions, Whichever is Later

II. DISCOVERY PLAN

A. Initial Disclosures

Today the parties exchanged initial disclosures pursuant to Federal Rule of Civil Procedure 26. The parties do not propose any changes to the form or requirement for disclosures under Rule 26(a) at this time.

B. Scope of Discovery

The parties currently anticipate that discovery will be needed on a number of issues. The parties believe that it is impractical to list all the principal issues of fact on which discovery will be needed other than to explain generally that the parties will need factual discovery related to class certification; Plaintiff's claims; any damages that flow from such claims; and any defenses pled in Defendants' Answers.

Given the above, the parties agree that a discovery schedule departing from Local Rule 26-1(b) is necessary in this case. The parties submit that a discovery period of more than 180 days is necessary due to the large number of parties, complexity of issues, class certification issues, and length of the relevant time period. Specifically, the parties anticipate that document discovery from Switch, the individual Defendants, the Underwriter Defendants, and third parties will be extensive and require a significant amount of time for review, collection, and production. After the initial acquisition and review of these documents, the parties will need additional time to review and analyze these documents prior to conducting depositions. In addition, several third-party witnesses reside out of state and coordination with these witnesses is likely to be time consuming. Further, expert discovery will cover complex economic and technical issues. The parties have agreed to conduct expert discovery following the completion of fact discovery (unless and to the extent necessary for the Class Certification motion, subject to the stipulation of the parties or order of the Court).

Although the length of time for fact discovery proposed by the parties exceeds the standard 180 days provided by Local Rule 26-1(b), based on their experience in other similar cases the parties believe the proposed schedule is a realistic estimate of how long fact discovery will take. The proposed schedule also provides a timeline for class certification briefing and discovery relating thereto.

C. Fact Discovery Cut-Off Date

The parties propose to complete fact discovery by September 11, 2020, which is 380 days from the date the Defendants filed their answer. As set forth in Section II(G) below, the parties request that expert witness disclosure and discovery proceed after the completion of fact discovery.

D. Written Discovery

The parties' position is that, at this time, no modifications are necessary to the limits on written discovery set forth in Federal Rules of Civil Procedure 33, 34, and 36. As permitted by the Federal Rules of Civil Procedure, additional interrogatories may be granted by further order of this Court or by stipulation.

1 **E. Depositions**

2 **Plaintiff's Position**

3 Plaintiff proposes a maximum of thirty (30) fact depositions per side, without prejudice to
 4 any party's right to seek additional depositions or a protective order with respect to specific
 5 depositions if necessary. Plaintiff believes that this securities class action, which involves
 6 allegations of negligently prepared offering materials in an initial public offering of well more than
 7 \$500 million, and implicates Switch's operations, management, and customers, as well as the
 8 underwriting and due diligence process for the offering, presents numerous factual complexities
 9 warranting substantially more than the ten (10) depositions proposed by Defendants. Although
 10 this action is in the early stages and Plaintiff has not yet had an opportunity to identify all of the
 11 likely witnesses they will want to depose, Plaintiff is already able to identify both a significant
 12 number of specific individuals and categories of witnesses whose testimony is likely to be
 13 necessary, including, *inter alia*:

- 14 • The seven (7) Switch Defendants in the litigation, including the six individual Switch
 15 Defendants, who include the Company's CEO and other officers and directors, and
 16 Switch itself, as to whom Plaintiff will likely seek a Rule 30(b)(6) deposition;
- 17 • The eleven (11) Underwriter Defendants, who profited millions of dollars from the IPO
 18 and purportedly conducted the due diligence on the offering;
- 19 • Members of the Company's executive management team and other employees who
 20 were involved in the decision to implement a new sales strategy that focused on selling
 21 hybrid cloud solutions;
- 22 • Employees who were involved in or implemented Switch's new sales strategy that
 23 focused on selling hybrid cloud solutions;
- 24 • Third party customers for which Switch attempted to sell hybrid cloud solutions prior
 25 to or around the time of IPO; and
- 26 • Analysts who covered the Company and its roadshow presentations, several of whom
 27 were cited or referenced in Amended Complaint, including, *inter alia*, Cowen and
 28 Company, LLC (§50), Jeffries (§54), and BTIG (§54).

1 Plaintiff prepared this witness list before receiving Defendants' initial disclosures,
2 corporate organizational charts, or any other discovery. As discovery proceeds, Plaintiff believes
3 he will identify additional witnesses. While the parties could set a lower deposition limit and seek
4 the Court's modification of the deposition limit at a later time, Plaintiff believes it would be better
5 to start with a realistic target so that multiple requests for modifications of the limit are
6 unnecessary.

7 **Defendants' Position**

8 Defendants' position is that there is no showing of good cause at this time to allow more
9 than 10 fact witness depositions per side and certainly no justification for 30 fact witness
10 depositions per side. The Switch Defendants do not believe that each individual defendant has
11 non-duplicative knowledge relevant to the parties' claims or defenses, and there are a limited
12 number of other percipient witnesses. The Underwriter Defendants similarly believe that the
13 Plaintiff need only take the deposition of a representative of the lead Underwriter Defendants, and
14 additional depositions would be duplicative and unnecessary. The parties can meet and confer to
15 determine whether additional depositions are necessary as the case progresses, and any party may
16 seek to expand the number by stipulation or order of the Court if necessary. Plaintiff has not and
17 cannot provide any justification for its request to triple the number of depositions permitted by the
18 Federal Rules of Civil Procedure, beyond naming multiple parties as Defendants. That Plaintiff
19 has named numerous Defendants does not mean those individuals have knowledge relevant to
20 Plaintiff's claims or that deposing each of those individuals would not be duplicative and unduly
21 burdensome. Rather, Plaintiff's unjustified and premature request to expand the scope of
22 discovery suggests that Plaintiff is seeking to engage in a fishing expedition and leverage the
23 incredible expense of potential discovery to force an otherwise unwarranted settlement—a practice
24 the Private Securities Litigation Reform Act was intended to prevent. Even if that is not Plaintiff's
25 intent, permitting Plaintiff to drastically expand the limits set by the Federal Rules of Civil
26 Procedure before any discovery has been conducted would incentivize unduly burdensome or
27 duplicative discovery in the form of numerous unnecessary depositions.

28

F. Electronically Stored Information (“ESI”) and Confidentiality

The parties have taken reasonable measures to preserve potentially discoverable data from alteration or destruction in the ordinary course of business or otherwise. The parties believe that a stipulated protective order should be entered to govern the exchange of confidential information and the protocol concerning discovery of ESI and in this case. The parties agree to meet and confer to reach an agreement on the scope of a proposed stipulated protective order and a protocol concerning the discovery of ESI. The Parties will submit a proposed protective order and ESI protocol to the Court once an agreement has been reached.

G. Expert Disclosures

The parties request that the deadlines for expert disclosures and their respective rebuttals be due after the completion of fact discovery, to permit experts to have a fuller understanding of discovery prior to formulating and exchanging opinions. The parties agree that expert witness disclosure and discovery shall proceed as follows:

On or before October 12, 2020, the parties shall designate experts and provide the information required by Federal Rule 26(a)(2) (including any reports) on any matter, including any claim(s) or defense(s), for which they bear the initial burden of proof.

On or before November 23, 2020, the parties shall designate any rebuttal experts and provide the information required by Federal Rule 26(a)(2) (including any reports) in rebuttal.

Expert discovery, including the depositions of any experts, shall be completed on or before December 31, 2020.

H. Motion Schedule

Plaintiff anticipates filing a motion for class certification. Plaintiff may also move for summary judgment or partial summary judgment under Rule 56.

Defendants anticipate opposing any motion for class certification. Defendants also anticipate moving for judgment on the pleadings under Rule 12(c), summary judgment, or partial summary judgment under Rule 56.

The proposed cut-off dates by which motions must be filed are set forth above.

III. OTHER ITEMS

A. Alternative Dispute Resolution

The parties certify that they have conferred, but are not currently engaged in any form of Alternate Dispute Resolution.

B. Alternative Forms of Case Disposition

The parties certify that they considered consenting to trial by a magistrate judge under 28 U.S.C. § 636(c), Federal Rule of Civil Procedure 73, and the use of the Short Trial Program, and do not consent to proceed under § 636(c).

C. Electronic Evidence

Pursuant to Local Rule 26-1(b)(9), the parties certify that they agree to provide evidence in an electronic format compatible with the Court's electronic jury evidence display system at trial.

Dated: September 18, 2019

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ORDER

IT IS SO ORDERED:

UNITED STATES MAGISTRATE JUDGE

DATED: _____

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and that, on this 18th day of September 2019, I caused to be served a true and correct copy of the above and foregoing **JOINT RULE 26(f) REPORT** to the following:

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